98-1478

No. _____

Supreme Court, U.S.
FILED
MAY 20 1999
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

ZENOBIA HAMILTON RAINEY,

PETITIONER,

VS.

ROBERT LEE CHEVER,

RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

This petition seeks this Court's review of a decision of the Georgia Supreme Court affirming a trial court's ruling that O.C.G.A. § 53-2-4(b)(2) (formally O.C.G.A. § 53-4-5(b)(2) violates the federal and state constitutional equal protection guarantees. The statute at issue creates a gender-based classification, imposing on fathers, but not mothers, the burden of openly treating a child born out of wedlock as his own before he may inherit from that child. The Georgia Supreme Court found that no legitimate state interest or important objective was advanced or achieved by singling out the father of such a child, while not subjecting the mother to the same requirement of openly treating the child as her own.

A. The petition misrepresents the question presented in this case.

Petitioner has distorted the true question presented in this case by couching the question in gender-neutral terms and omitting any reference to the very statute that has been

held unconstitutional by the courts below. The Petitioner states her question presented as follows:

> "1. Whether a biological parent of a child born out of wedlock is entitled to constitutional protection of a right to gain financially from the death of the child, where during the child's life that parent never took any responsibility with respect to the supervision, education, protection, or care of the child, and totally failed to grasp the opportunity to develop a significant familial relationship with the child?"

(Pet. *i*)

Respondent submits that the decision of the Georgia Supreme Court did not hold that such a constitutional right now exists on the part of such a biological parent. Petitioner seems to intimate that the decision of the Georgia Supreme Court has granted such a right to Respondent. First, Respondent disputes that he fits into the category of biological parents described in Petitioner's question presented. Secondly, the Georgia Supreme Court only engaged in a preliminary analysis to determine if the statute, on its face, contained a gender-based classification substantially related to an important governmental interest.

Without a detailed examination of the facts of this case, the Supreme Court of Georgia held that:

> "Under Georgia law, the mother of a child born out of wedlock is permitted to inherit from the child as though the child were legitimate without any precondition as to recognition of the child or having provided support for the child. O.C.G.A. § 53-2-4(a). Therefore, by its plain language, O.C.G.A. § 53-2-4(b)(2) creates a gender-based classification in that only fathers of children born out of wedlock must openly treat the child as their own and provide support for the child in order to inherit from the child."

And further, on the issue of whether such a gender-based classification was substantially related to an important governmental objective:

> "Although the State has an important interest in encouraging fathers to take responsibility for children born out of wedlock, the State has an equally important interest in encouraging the identical behavior in mothers. Therefore, the State interest proffered to support subsection (b)(2) does not justify a classification based solely on the gender of the parent."

Rainey *v. Chever*, 510 S.E.2d 823 (1999) at 824, (Pet. App. A, pp. 2-3).

Holding the statute unconstitutional as applied to the Respondent does not thereby grant Respondent a constitutional right to abandon his child and still inherit, as Petitioner represents. (Pet. 7). Quite to the contrary, the decision of the Georgia Supreme Court requires that if the State legislature desires to use O.C.G.A § 53-2-4 (b)(2) to increase parental responsibility, it must apply its requirements in equal fashion to both mothers and fathers. Therefore, the decision removes a mother's previously statutorily protected right to inherit despite her refusal or failure to treat her child as her own. This puts the similarly situated mother and father on equal footing and subjects both of them to losing their right of inheritance. The statute as written does not permit such joint examination, and the Supreme Court of Georgia found no important governmental interest substantially related to the gender-based classification.

Petitioner has thus distorted the true meaning of the decision and declares that its result is "morally egregious"

and that this case presents a "clean vehicle" to "establish a clear precedent" that a biological parent of a child born out of wedlock has no constitutionally-protected right to inherit from a child that they have neglected in various respects. (Pet. 20). Respondent submits that since the proffered basis for Petitioner's request of this Court is incorrect, that her petition be denied on this basis also.

Therefore, Respondent submits that the question presented is more simply and appropriately stated as follows:

> 1. Whether a state statute that requires fathers, but not mothers, to openly treat a child born out of wedlock as their own before they may inherit from that child, violates the father's right to equal protection of the laws under the state and federal constitutions by creating a gender-based classification not substantially related to any important governmental interest.

B. The petition omits and misstates the constitutional provisions and statutes involved in this case.

Petitioner has omitted the following constitutional provision, its interpretation and application being central to the decision of the Georgia Supreme Court:

Georgia Constitution *of 1983, Article I, Section I, Paragraph II*:

> "Paragraph II, Protection to person and property; equal protection.
>
> Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied equal protection of the laws."

Petitioner has also misstated the statute at issue several times in her brief. (Pet. at 2, 3, and 5). She repeatedly refers to the statute ruled unconstitutional as O.C.G.A. § 53-2-20. In actuality, the statute is O.C.G.A. § 53-2-4 (b)(2) (formally O.C.G.A. § 53-4-5(b)(2)).

OTHER REASONS FOR DENYING THE PETITION

Respondent respectfully submits that this Court does not have jurisdiction to grant this Petition in that the Supreme Court of Georgia has specifically held that O.C.G.A. § 53-2-4(b)(2) (formerly O.C.G.A. § 53-4-5(b)(2)) violates the equal protection clause of the Georgia State Constitution of 1983, Art. I, Sec. I, Par. II. *Rainey v. Chever*, 510 S.E.2d 823

(1999) at 824. Declaring the subject statute unconstitutional as a matter of state law is completely dispositive on the merits and constitutes an adequate and independent state ground to uphold the court's decision. *Lynch v. New York*, 293 U.S. 52, 55 S. Ct. 16, 79 L. Ed. 191 (1956). Respondent recognizes the "plain statement" requirement previously set forth by this Court, which imposes an obligation upon a state court to expressly state that federal interpretation of a similar federal constitutional provision has been used merely for guidance, and did not compel the result the state court has reached. *Michigan v. Long*, 463 U.S. 1032, 103 S. Ct. 3469, 77 L. Ed 2d 1201 (1983). However, such independent state grounds "fairly appear" from the decision in that the Georgia Supreme Court specifically cited the state constitutional provision and other state case law interpreting it, in holding the subject statute violated the equal protection rights of Respondent. *Coleman v. Thompson*, 501 U.S. 722, 115 L. Ed. 2d 640, 111 S.Ct. 2546 (1991). Respondent submits that the definition of this "plain statement" has yet to be clarified

by this Court, but that a state court's express reliance on a state constitutional provision should suffice under the *Michigan v. Long* requirement. Therefore, there being no federal question presented, and to avoid the issuance of what would in essence be an advisory opinion, this Court should deny the petition.

Additionally, in the event this Court decides that it has jurisdiction, it still should not exercise jurisdiction because this is not a case where Petitioner has been denied a right guaranteed to her by the United States Constitution. Instead, the Supreme Court of Georgia has held that Respondent's right to equal protection of the laws, under the Georgia Constitution, and coincidentally, under the Federal Constitution, have been violated by the facially discriminatory language of O.C.G.A. § 53-2-4(b)(2). Where a state court is protecting, rather than denying constitutional rights, it would be a waste of precious judicial resources for this Court to engage in an analysis of deciding if the Georgia Supreme Court has interpreted its state equal protection

clause to offer greater rights than the similar federal provision, as the latter has been interpreted by this Court. *Michigan v. Long*, 463 U.S. 1032, 1066 (1983) (Stevens, J., dissenting). The Georgia courts' decisions below simply mandate that the statutory requirements apply equally to a mother and a father of a child born out of wedlock. It certainly serves public policy to statutorily encourage the participation of both parents, rather than just the father, to openly treat a child as his or her own. In this respect, the statute as written allows a mother to completely abandon her child, while allowing her the unfettered right of inheritance. Petitioner is asking this Court to hold, as a matter of federal constitutional law, that an irresponsible parent of a child born out of wedlock, has no constitutionally protected right to inherit from that child. Such a holding would be an advisory opinion because that is not the actual issue presented in this case.

CONCLUSION

For the reasons given above, the petition should be denied.

Dated: May 24, 1999.

Respectfully submitted,
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